

LAND COURT

REGULAR SYSTEM

AFTER RECORDATION, RETURN BY MAIL (X) PICKUP () TO:

Plaza at Kaneohe, LP
900 Fort Street Mall, Ste. 1188
Honolulu, Hawaii 96813

Total No. of Pages: 10

TITLE OF DOCUMENT: Unilateral Agreement and Declaration for Conditional Zoning

PARTY(IES) TO DOCUMENT: JANEEN-ANN AHULANI OLDS, LANCE KEAWE WILHELM, ROBERT K.W.H. NOBRIGA, CORBETT AARON KAMOHAIKIOKALANI KALAMA and MICAH A. KANE, as Trustees Under the Will and of the Estate of Bernice Pauahi Bishop, Deceased

Plaza at Kaneohe, LP, a Hawaii limited partnership

TAX MAP KEY NO. (1) 4-6-011-046

**UNILATERAL AGREEMENT AND
DECLARATION FOR CONDITIONAL ZONING**

THIS INDENTURE (hereinafter referred to as this "**Unilateral Agreement**" or this "**Declaration**"), made this _____ day of _____, 2014, by JANEEN-ANN AHULANI OLDS, LANCE KEAWE WILHELM, ROBERT K.W.H. NOBRIGA, CORBETT AARON KAMOHAIKIOKALANI KALAMA and MICAH A. KANE, as Trustees of the Estate of Bernice Pauahi Bishop, whose address is 567 South King Street, Suite 200, Honolulu, Hawaii 96813

(hereinafter referred to as the "**Declarant**") and joined by PLAZA AT KANEOHE, LP, a Hawaii limited partnership, whose address is 900 Fort Street Mall, Suite 1188, Honolulu, Hawaii 96813 (hereinafter referred to as "**Plaza**").

WITNESSETH:

WHEREAS, the Declarant is the owner in fee simple of that certain parcel of land situated in Heeia, District of Koolaupoko, City and County of Honolulu, State of Hawaii, consisting of approximately 209,175 square feet, described as Tax Map Key No. 4-6-011-046, and more particularly described in **Exhibit "A"** attached hereto and made a part hereof (the "**Land**"), and desires to make the Land subject to this Unilateral Agreement; and

WHEREAS, Plaza has entered into an unrecorded contract with the Declarant for the Declarant to lease approximately 69,538 square feet of the Land to Plaza after such portion of the Land is subdivided, on which Plaza plans to develop and operate a senior assisted-living facility (the "**Project**"); and

WHEREAS, the portion of the Land is depicted as the parallel-lined area designated as "Project Area" on the portion of Zoning Map No. 22 attached hereto as **Exhibit "B"** and made a part hereof (the "**Project Area**"); and

WHEREAS, the City Council (the "**Council**") of the City and County of Honolulu (the "**City**"), pursuant to the provisions of the Land Use Ordinance ("**LUO**"), Revised Ordinances of Honolulu 1990 ("**ROH**") Section 21-2.80, as amended, relating to conditional zoning, is considering a change in zoning under the LUO of the Project Area from the B-2 Community Business District with a 40-foot height limit to the A-2 Medium-Density Apartment District with a 40-foot height limit (the "**zone change**"); and

WHEREAS, the Applicant for the zone change is MW Group, Ltd., a Hawaii corporation, whose address is 900 Fort Street Mall, Suite 1188, Honolulu, Hawaii 96813, which is an affiliate of Plaza; and

WHEREAS, a public hearing regarding the change in zoning, Bill 28 (2014), was held by the Council on _____, 2014; and

WHEREAS, the Council recommended by its Zoning and Planning Committee Report No. _____ that said zone change be approved, subject to the following conditions contained in this Declaration to be made pursuant to the provisions of ROH Section 21-2.80, as amended, relating to conditional zoning, and to become effective on the effective date of the zoning ordinance approving the change of zoning (the "**Rezoning Ordinance**");

NOW THEREFORE, the Declarant and Plaza hereby covenant and declare as follows:

1. Transportation. The Declarant and Plaza shall carry out the following requirements related to traffic and transportation improvements for the Project:
 - a. Construction plans for all improvements within or affecting public streets shall be submitted for review and approval to the Department of Planning and Permitting (the "**DPP**") prior to the issuance of building permits. The plans shall address the need for separate left turn lanes servicing the Project site driveway and the Windward Mall driveway on Alaloa Street. Adequate vehicular sight distance shall be provided and maintained for pedestrians and vehicles.
 - b. Prior to issuance of building permits, the Declarant and Plaza shall submit a site plan for review and approval to the DPP that delineates the Project site's driveway in alignment with the existing Windward Mall driveway situated on Alaloa Street, approximately 230 feet south of the intersection at Haiku Road. The Plan shall also address all parking and loading/unloading needs.
 - c. The Declarant and Plaza shall establish a 30-foot property line corner radius for the property at the Haiku Road and Alaloa Street intersection and dedicate that portion of the land to the City and County of Honolulu for transportation-related purposes prior to certificate of occupancy approval.
2. Affordable Housing Program. Prior to building permit approval for residential use, the Declarant and Plaza shall execute a binding agreement to participate in an affordable housing plan acceptable to the DPP in accordance with adopted rules. The agreement shall provide for no less than 30 percent of the total residential units constructed to be affordable housing units.
3. Subdivision. Prior to issuance of building permits, the Declarant shall subdivide the Land to coincide with the zone change boundaries, and in a manner acceptable by the DPP. On the subdivision of the Project Area, the Declarant and Plaza may apply for an amendment to this Unilateral Agreement so that it only encumbers the Project Area.
4. Compliance With Other Governmental Requirements. The Declarant and Plaza acknowledge that approval of the zone change does not constitute compliance with other LUO or other governmental requirements. They are subject to separate review and approval. Plaza shall be responsible for ensuring that the final plans for the Project comply with all applicable LUO and other governmental provisions and requirements.
5. Annual Reports. On an annual basis, the Declarant and Plaza shall submit a written status report to the DPP documenting its satisfaction of and/or describing its progress toward complying with each condition of approval for this zone change. The status report shall be submitted to the DPP by December 31 of each year until such time as the DPP has determined that all conditions of approval have been satisfied.

6. Noncompliance With Any Conditions. In the event of noncompliance with any of the conditions set forth herein, the Director of Planning and Permitting shall inform the Council and may seek civil enforcement or take appropriate action to terminate or stop the Project until applicable conditions are met, including but not limited to revoking any permits issued under the zoning and withholding issuance of other permits related to the Project. Noncompliance also may be grounds for the enactment of ordinances making further zone changes, including revocation of the underlying zoning, upon initiation by the proper parties in accordance with the Revised City Charter.

NOW, THEREFORE, the Declarant and Plaza hereby make the following additional Declarations:

As used herein, references to a specific City department or agency shall be deemed to include a reference to any successor department or agency.

That the conditions imposed herein are reasonably conceived to fulfill public service demands created by the requested change in zoning and are rationally related to the objective of preserving the public health, safety and general welfare and the further implementation of the General Plan of the City and County of Honolulu.

That the development of the Land shall conform to the aforesaid conditions with the understanding that, at the request of the Declarant or Plaza, and upon the satisfaction of the conditions set forth in this Unilateral Agreement, the Department of Planning and Permitting may fully or partially release, as applicable, any of the foregoing conditions that have been fulfilled, and such release document may be executed by Declarant or Plaza without the consent and joinder of any mortgagee.

That if there are any conflicts between this Unilateral Agreement and any previous unilateral agreement(s) applicable to the Land, the terms and conditions of this Unilateral Agreement shall apply.

AND IT IS EXPRESSLY UNDERSTOOD AND AGREED that the conditions imposed in this Declaration shall run with the Land and shall bind and constitute notice to all the parties hereto and subsequent lessees, grantees, assignees, mortgagees, lienors, successors, and any other persons who have or claim to have an interest in the Land, and the City and County of Honolulu shall have the right to enforce this Declaration by rezoning, appropriate action at law or suit in equity against all such persons, provided that the Declarant or its successors and assigns may file a petition with the Department of Planning and Permitting for amendment or removal of any conditions or termination of this Declaration, such petition to be processed in the same manner as petitions for zone changes.

AND PLAZA AT KANEOHE, LP, hereby agrees that it will observe and perform the covenants to be observed and performed by it herewith and agrees that the Project Area shall hereafter be subject to the covenants and conditions contained herein.

This Declaration has been executed by or on behalf of the Trustees of the Estate of Bernice Pauahi Bishop in their fiduciary capacities as said Trustees, and not in their individual capacities. No personal liability or obligation under this Declaration shall be imposed or assessed against said Trustees in their individual capacities.

This Unilateral Agreement may be executed in counterparts.

- The remainder of this page is intentionally left blank; the next page is the signature page. -

IN WITNESS WHEREOF, the parties hereto have executed this Unilateral Agreement and Declaration for Conditional Zoning on the day and year first above written.

TRUSTEES OF THE ESTATE OF BERNICE
PAUAHI BISHOP, as aforesaid

“Declarant”

PLAZA AT KANEOHE, LP, a Hawaii limited
partnership

By Its General Partner:

PLAZA AT KANEOHE HOLDINGS, LLC,
a Hawaii limited liability company,

By _____
Name: _____
Title: Manager

Date _____

“Plaza”

STATE OF HAWAI'I)
) SS.
CITY AND COUNTY OF HONOLULU)

On _____, before me appeared _____, and
_____, _____, solely as
TRUSTEES OF THE ESTATE OF BERNICE PAUAHI BISHOP and not individually, to me known to be the
persons described in the foregoing instrument and who did say that they executed the foregoing instrument as
their free act and deed as such Trustees.

Signature : _____

Name:
Notary Public, State of Hawai'i

My commission expires:

(Official Stamp or Seal)

NOTARY CERTIFICATION STATEMENT

Document Identification or Description: Unilateral Agreement and
Declaration for Conditional Zoning

Doc. Date: _____ or ☐ Undated at time of
notarization.

No. of Pages: _____ Jurisdiction: First Circuit
(in which notarial act is performed)

Signature of Notary

Date of Notarization and
Certification Statement

Printed Name of Notary

(Official Stamp or Seal)

STATE OF HAWAII)
) ss.:
CITY AND COUNTY OF HONOLULU)

On this _____ day of _____, 2014, before me personally appeared _____, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacity(ies) shown, having been duly authorized to execute such instrument in such capacity(ies).

(Print or Type Name of Notary)

(Signature of Notary)

Notary Public, State of Hawaii

My Commission Expires:_____

NOTARY CERTIFICATION STATEMENT

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Doc. Date: _____ or ☐ Undated at time of notarization.

No. of Pages: _____ Jurisdiction: First Circuit
(in which notarial act is performed)

Signature of Notary

Date of Notarization and
Certification Statement

Printed Name of Notary

(Official Stamp or Seal)

EXHIBIT "A"

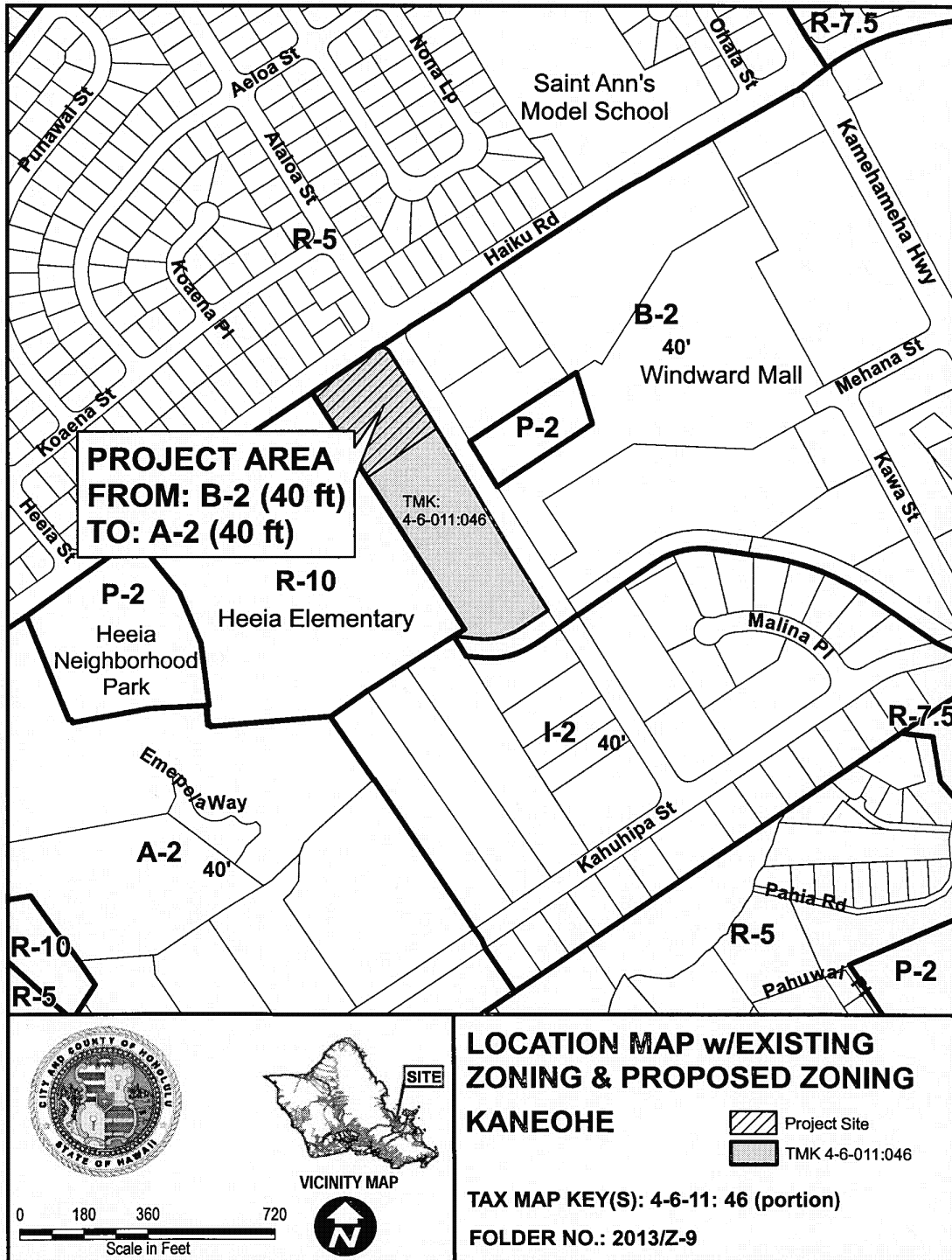
All of that certain parcel of land situate at Heeia, District of Koolaupoko, City and County of Honolulu, State of Hawaii, described as follows:

LOT 1656, area 4.802 acres, more or less, as shown on Map 189, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1100 of the Trustees Under the Will and of the Estate of Bernice Pauahi Bishop, Deceased;

Being land(s) described in Transfer Certificate of Title No. 142,857 issued to the TRUSTEES UNDER THE WILL AND OF THE ESTATE OF BERNICE PAUAHI BISHOP, DECEASED.

END OF EXHIBIT "A"

EXHIBIT "B"



Prepared by: Department of Planning and Permitting
City and County of Honolulu

Date Prepared: Jan. 10, 2014

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END OF EXHIBIT "B"